

	Administrative Regulation		Policy #	06-01.04
	DOT – CDL Substance Abuse Testing		Effective Date:	June 14, 2021
			Revision Date:	N/A
			Owner:	Risk Management

PURPOSE

It is the intent of this administrative regulation to maintain a substance-free work force in the interest of the health and safety of employees and the public, to enhance worker productivity and safety and to encourage employees to seek assistance and treatment.

SCOPE

Covered employees include candidates with a conditional offer of employment in positions that require a Commercial Driver's License (CDL) and City of Springfield employees whose job duties require a CDL. A CDL is required for employees who operate vehicles more than 26,000 pounds or a 16 passenger or more vehicle. Employees with duties exempted by law are not included in the scope of this administrative regulation.

POLICY

The policy of the City is to comply with applicable federal regulations, to maintain safe, efficient working conditions for City employees, and to encourage the use of the City's Employee Assistance Program (EAP) for help with substance abuse. Participation in the City's drug and alcohol testing program is a condition of employment for all covered employees.

PROCEDURE

1. Prohibited Conduct

- 1.1. The City expects and requires all covered employees to report to work in an appropriate mental and physical condition to work safely and effectively. No covered employee shall report to work or engage in work while having the presence of alcohol, illegal drugs, or any other disabling or controlled substances in their system.
- 1.2. Except as specifically provided herein, covered employees are prohibited from engaging in the possession, sale, transportation, distribution, manufacture or use of alcohol, illegal drugs, or any other disabling or controlled substance at any time while on duty and/or on City premises, which include City owned or operated vehicle(s) or facilities.
- 1.3. Federal Motor Carrier Safety Administration (FMCSA) regulation 49 CFR part 382, "Controlled Substances and Alcohol Use and Testing," prohibits a covered employee from performing a safety-sensitive function with a breath alcohol concentration level of 0.02 or greater. In addition, a covered employee must not consume alcohol while

performing a safety-sensitive function and must not consume alcohol four (4) hours prior to performing a safety-sensitive function and up to eight (8) hours following an accident or until the covered employee undergoes a post-accident drug and/or alcohol test, whichever occurs first.

2. Prescription/Over-The-Counter Drugs Use.

- 2.1. A covered employee may possess and use medically authorized prescription or over-the-counter drugs at work as long as they do not have disabling effects or otherwise affect the covered employee's fitness for duty or job performance.
- 2.2. It is the covered employee's responsibility to determine from the pharmacist or health care professional whether or not the prescribed or over-the-counter drugs could affect their fitness for duty or impair job performance and report any effects to their immediate supervisor.
- 2.3. Covered employees may be required to provide written medical authorization to work from a physician should they need to take prescription or over-the-counter drugs.
- 2.4. If there is a question regarding an employee's ability to work safely and effectively while using prescription or non-prescription medications, clearance from a qualified physician will be required. The City retains the right to make final determination concerning an employee's fitness to perform work.

3. Reporting Impaired Behavior in the Workplace. Each employee has a responsibility to report to management or any member of the Human Resources Department if they observe or have knowledge of a covered employee in a condition that impairs their ability to perform their job duties or who poses a serious hazard to the safety and welfare of others.

4. Workplace Drug-Related Convictions. The Drug Free Workplace Act of 1988 requires covered employees, as a condition of employment, to report any criminal convictions of drug-related activity in the workplace to the City no later than five days after a conviction. Covered employees convicted of workplace drug-related crimes will be subject to suspension or discharge.

5. Inquiries to Previous Employers and the FMCSA Drug and Alcohol Clearinghouse.

- 5.1. The City or its contractor will make an inquiry to previous employers regarding positive tests for controlled substances and/or alcohol, and any refusal to test (49 CFR parts 391.51 and 391.23)
- 5.2. The City or its contractor is required to conduct annual limited queries of the FMCSA Drug and Alcohol Clearinghouse. If limited queries indicate a drug or alcohol violation, the City is required to conduct full queries of the Clearinghouse. The City will obtain authorization from covered employees to conduct these queries per the FMCSA clearinghouse rules.

5.3. If an employee refuses to provide consent for limited or full queries of the Clearinghouse, the City is required to prohibit the employee from performing safety sensitive functions, including driving a commercial vehicle, as required by FMCSA's drug and alcohol program regulations.

6. Right to Inspection. When the City has reasonable grounds to believe a covered employee is in improper possession of drugs or open alcohol containers on City property that employee may be required to permit an inspection of their person, personal property, or personal vehicle. The City will have at least one witness and/or union representative present when conducting an inspection. Refusal to submit to such an inspection may result in discipline, up to and including termination. The City reserves the right to inspect City property (ex. desks, file cabinets, lockers) at any time.

7. Training

7.1. All covered employees will receive training regarding the effects and consequences of substance abuse.

7.2. All supervisors who will be responsible for determining when it is appropriate to administer reasonable suspicion drug and/or alcohol tests will receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse.

8. Testing

8.1. The Department of Transportation (DOT) regulation 49 CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," prescribes the testing methods that will be used.

8.2. All drug and alcohol testing will be conducted in an environment that affords privacy for the covered employee being tested. The City will strictly adhere to all standards of confidentiality, maintaining the confidentiality of the covered employee throughout the drug and/or alcohol testing process, and releasing testing records and results only to those authorized to receive such information.

8.3. Except as otherwise provided herein, the City will be responsible for all costs directly associated with the drug and alcohol tests specified in this policy.

9. Types of Testing

9.1. *Pre-employment Test*

9.1.1. All candidates for employment in safety-sensitive or CDL positions, current City employees requesting to be transferred or promoted into safety-sensitive

positions, and employees returning to work after layoff or leave of absence must submit to and pass drug and alcohol testing.

- 9.1.2. Employees considered for promotion or transfer into a safety-sensitive position, or return from layoff or leave are not required to be tested if they have participated in the City's controlled substances testing program within the previous 30 days, were tested for controlled substances within the past six (6) months from the date of the application, and participated in the random drug controlled substances testing program for the previous 12 months.
- 9.1.3. Candidates with an offer of employment for safety-sensitive positions must sign a release and provide any prior employer positive alcohol and/or controlled substances testing results, any subsequent substance abuse professional (SAP) evaluations, return to duty tests and records of any test refusals within the preceding two (2) years;
- 9.1.4. The City or its contractor will maintain a written, confidential record of each past employer contacted and all queries on the FMCSA Drug & Alcohol Clearinghouse.
- 9.1.5. Failure of a drug and/or alcohol test or notification from a prior DOT employer of a similar violation within the previous six months will disqualify a candidate for employment in or transfer to a CDL position. Inability of a candidate to provide an adequate sample is considered a test failure. Candidates who have failed a test will not be eligible for evaluation by the City's Substance Abuse Professional (SAP) or referral by the City's Medical Review Officer (MRO) for a medical evaluation to determine if the inability to provide a specimen is for a valid medical reason. Unless otherwise provided by law, The City will not provide exemptions to pre-employment alcohol and/or controlled substances testing and a candidate who has failed a pre-employment drug or alcohol test will be ineligible to submit another application for employment with the City for a period of six months.
- 9.1.6. Refusal to submit to alcohol and controlled substances testing, failure to report to the collection site as soon as practicable, or failure to sign a release of information as required by the City shall all be treated as a failed test and may be considered to be insubordination. The covered employee may be subject to discipline up to and including termination of employment.
- 9.1.7. Prior to being directed by the City to a collection site for alcohol and/or controlled substances testing, the applicant will be notified that the urine sample collected shall be tested for the presence of controlled substances and that breath testing shall be conducted for the presence of alcohol.

9.2. Reasonable Suspicion Test

- 9.2.1. Reasonable suspicion testing will be based on specific contemporaneous, articulable observations made by a trained supervisor as designated by the City, concerning appearance, behavior, speech or body odors indicative of employee use of alcohol and controlled substances. Observations of controlled substance use may include indication of chronic and withdrawal effects of controlled substances, pursuant to 49 Code of Federal Regulations ("CFR"), Part 382.307
- 9.2.2. Covered employees will be required to submit to urine testing for drugs and/or alcohol breath testing when two or more supervisor(s) trained to identify the signs and symptoms of drug use and alcohol misuse conclude there is a reasonable suspicion that the covered employee is under the influence of a prohibited drug or has misused alcohol.
- 9.2.3. Observations must have occurred just before the covered employee is scheduled to work, while working, or just after completing a work shift. Hearsay or second hand information is not sufficient to require an employee to submit to testing.
- 9.2.4. The supervisor(s) are required to articulate and substantiate physical, behavioral, and performance indicators of probable drug use or alcohol misuse. A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or City official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier. All documents generated in connection with decisions to administer a reasonable suspicion drug and/or alcohol test will be forwarded to and maintained by the Human Resources Director or designee. If requested, the employee shall receive a copy of the written record within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier.
- 9.2.5. The employee will be informed by the supervisor that they are suspected of being impaired by alcohol and/or controlled substances.
- 9.2.6. When a covered employee has been notified that they will be required to submit to reasonable suspicion drug and/or alcohol testing, they must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is completed.
- 9.2.7. Refusal to submit to alcohol and/or controlled substances testing and/or to sign the release of information as required by the City shall be treated as a positive test and may be considered as insubordination. The covered employee may be subject to discipline up to and including termination of employment.

- 9.2.8. If alcohol testing has not been administered within two (2) hours, the supervisor or designee will prepare and submit a record to Risk Management stating why the test was not promptly administered.
- 9.2.9. If alcohol testing is not administered within eight (8) hours, the City will cease to attempt to administer an alcohol test and the supervisor or designee will prepare and submit a record to Risk Management stating why the test was not promptly administered.
- 9.2.10. If drug testing is not administered within 32 hours, the City will cease to attempt to administer the drug test and the supervisor or designee will prepare and submit a record to Risk Management stating why the test was not promptly administered.

9.3. Post-Accident Test

- 9.3.1. As soon as practicable following an accident, the driver shall be tested for prohibited drugs and alcohol if:
 - 9.3.1.1. The accident involves loss of human life, or
 - 9.3.1.2. The driver receives a citation within 8 hours of the occurrence if the accident involves:
 - 9.3.1.2.1. Bodily injury to any person who, as a result of an injury immediately receives medical treatment away from the scene of the accident; or
 - 9.3.1.2.2. One or more motor vehicles is disabled and required to be transported away from the scene by a tow truck or other motor vehicle.
- 9.3.2. A subject employee is prohibited from using alcohol or a controlled substance for eight (8) hours after the accident or receipt of the citation or until the employee undergoes a test for alcohol and controlled substance use, whichever occurs first.
- 9.3.3. Accident testing may be put on hold while the employee receives medical attention following the accident or assists in the resolution of the accident. However, if the employee is conscious, testing may be administered simultaneously while the employee receives medical attention
- 9.3.4. When a covered employee has been notified of the requirement to submit to post-accident drug and/or alcohol testing, they must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is complete.

- 9.3.5. A driver involved in an accident must remain on the clock and readily available for drug and/or alcohol testing for up to eight hours after the accident. The covered employee is responsible for notifying the City of the location where they can be found if they leave the scene of the accident prior to submission to testing. Failure by the covered employee to remain readily available may be determined to be a refusal to submit to testing and may lead to disciplinary action up to and including discharge.
- 9.3.6. Post-accident drug and alcohol tests required by this policy are in addition to and/or separate from any tests conducted for law enforcement purposes.
- 9.3.7. If alcohol testing has not been administered within two (2) hours, the supervisor or designee will prepare and submit a memo to Risk Management stating why the test was not promptly administered.
- 9.3.8. If alcohol testing is not administered within eight (8) hours, the City will cease to attempt to administer an alcohol test and the supervisor or designee will prepare and submit a memo to Risk Management stating why the test was not promptly administered.
- 9.3.9. If drug testing is not administered within 32 hours, the City will cease to attempt to administer the drug test and the supervisor or designee will prepare and submit a memo to Risk Management stating why the test was not promptly administered.

9.4. *Random Test*

- 9.4.1. All covered employees will be subject to random and unannounced drug and/or alcohol testing. Covered employees are considered to be performing safety-sensitive functions during any period in which they are actually performing, ready to perform or immediately available to perform any safety-sensitive functions. They are therefore subject to random alcohol and/or controlled substances testing whenever they are at work or on-call. Employees are not subject to random testing while on leave.
- 9.4.2. The City's contractor will select employees for random testing using a scientifically valid method. The testing rate will be adjusted by the City's contractor to meet current federal drug and alcohol testing requirements.
- 9.4.3. Testing will be spread reasonably throughout all periods of the calendar year.
- 9.4.4. All covered employees will have an equal chance of being selected for testing and will remain in the random selection pool even after being tested. For example, it is possible for some covered employees to be tested several times in one year, and other covered employees not to be tested for several years.

- 9.4.5. Testing will be unannounced and immediate, and will allow no discretion by Operations Division personnel as to who is selected or notified to proceed to testing. The Risk Manager will notify the supervisor on the day the randomly selected covered employee should be tested. As soon as practicable, the employees selected for random testing shall be notified of whether they will be tested for controlled substances and/or alcohol.
- 9.4.6. When a covered employee has been notified that they have been selected for testing, they must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is completed
- 9.4.7. Failure to report to the collection site for testing as soon as practicable shall constitute a refusal to report for testing and shall be treated as a positive test.
- 9.4.8. Refusal to submit to alcohol and/or controlled substances testing and/or to sign the release of information as required by the City shall be treated as a positive test. Adulteration of sample or violation of testing site procedures will also be treated as a positive test result.

9.5. Return to Duty Test

- 9.5.1. All covered employees who have previously had a verified positive drug test, an alcohol test result of 0.04 or greater, refused to submit to a test, or engaged in any activity that violates this policy, must be evaluated by a Substance Abuse Professional (SAP) to determine whether the covered employee has followed the recommendations for action by the SAP and must pass a return to duty drug test and/or pass a breath alcohol test with a result showing an alcohol concentration level of less than 0.02 before being permitted to return to duty.
- 9.5.2. The City may require covered employees returning to work from a leave of absence, illness, layoff of a duration of more than 180 days, not doing a covered job for 90 days and not been in the random pool, or from a voluntary drug and/or alcohol treatment program to undergo a physical evaluation by a physician of the City's choice. The covered employee may be required to pass a return to duty drug test and/or submit to a breath alcohol test with a result showing an alcohol concentration level of less than 0.02, prior to return to work.

9.6. Follow-Up Test

- 9.6.1. A covered employee who has been permitted to return to duty following a verified positive drug test, an alcohol test result of 0.04 or greater, or a refusal to submit to a test will be subject to unannounced follow-up drug and/or alcohol testing recommend by the SAP. Testing will continue for at least 12 months but not more than 60 months and will include a minimum of six tests during the first 12

months after the covered employee has returned to duty. A covered employee, who has been permitted to return to duty, following voluntary treatment for a drug and/or alcohol problem, may also be required to submit to follow-up drug and/or alcohol testing.

9.6.2. When a covered employee has been notified that they have been selected for follow-up testing, they must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is completed.

9.6.3. Follow-up testing is separate from and in addition to regular random testing program.

10. Drug Testing Procedures

10.1. *Drugs Tested.* DOT drug tests require laboratory testing (49 CFR Part 40 Subpart F) for the following five classes of drugs:

10.1.1. Marijuana

10.1.2. Cocaine

10.1.3. Opiates – opium and codeine derivatives

10.1.4. Amphetamines and methamphetamines

10.1.5. Phencyclidine – PCP

10.2. *Drug cutoff concentrations.* These can be found on the Substance Abuse and Mental Health Services Administration Web site. DOT alcohol tests identify alcohol concentration of 0.02 and greater.

10.3. *Sample Collection.* All Drug and alcohol samples will be collected at a collection site, designated by the City, which meets the guidelines established by the DOT regulation 49 CFR Part 40.

10.4. *Observed Collection.*

10.4.1. Collection site personnel must observe a second urine collection immediately after the first collection if the covered employee has presented a urine sample that falls outside the normal temperature range (90 to 100 degrees), and/or The collection site personnel observe conduct indicating an attempt to substitute or adulterate the sample.

- 10.4.2. The City may authorize an observed collection as permitted by the Federal regulations if the covered employee has previously been determined to have used a controlled substance without medical authorization and the particular test in being conducted under the FTA regulation is a return to duty or follow-up test.

10.5. *Return to Duty after Specimen Collection*

- 10.5.1. A covered employee who is required to submit to random or follow-up testing may be returned to duty immediately following specimen collection.
- 10.5.2. A covered employee who is required to submit to a reasonable suspicion or post-accident drug test will not be permitted to return to duty and will be placed on paid administrative leave pending the receipt by the City of a verified test result.

10.6. *Drug Testing Laboratories*

- 10.6.1. All drug testing must be completed in a laboratory certified by the Department of Health and Human Services (DHHS) and will follow current testing guidelines as designated by the FMCSA and SAMHSA.

10.7. *Drug Test Results*

- 10.7.1. All drug test results will be reported by the testing laboratory to a qualified MRO designated by the City. The MRO will be responsible for verifying and validating drug test results. The MRO will review and interpret a covered employee's confirmed positive drug test result by reviewing the individual's medical history, prescription medications being taken, and affording the covered employee an opportunity to offer any clarifying information that would explain a positive test result. The MRO will report each verified test result to the City and will notify each covered employee who has a verified positive test result.

10.8. *Positive Drug Test Results*

- 10.8.1. A covered employee who has a verified positive drug test result will be immediately removed from safety-sensitive duties. The covered employee will be placed on a paid leave of absence pending evaluation by Substance Abuse Professional (SAP).
- 10.8.2. A covered employee who has a verified positive drug test result will have 72 hours, including holidays and weekends, from the time of notification by the MRO, or the City, whichever occurs first, in which to request that the split specimen be analyzed at a different DHHS-approved laboratory. All such requests must be received in writing by the City within the time frame. The split specimen will be analyzed to determine the presence, or absence, of the drug(s) for which a positive result was obtained in the test of the primary sample, without regard to the cutoff levels specified in the federal regulations for analysis of the

primary sample. The covered employee will be responsible for paying the cost of the split sample testing.

10.8.3. If the result of the test of the split specimen fails to confirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO will cancel the test and report the cancellation and the reasons for it to the City, the covered employee, and the DOT. The covered employee will be returned to duty.

10.8.4. The request by an employee for an analysis of the split specimen will not delay the removal of the covered employee from safety-sensitive duties.

10.8.5. Any absence from duty as a result of a positive controlled substance test or an alcohol concentration rate of 0.02 or greater shall be charged to existing vacation, compensatory time and floating holiday leave balances to the extent available. Sick leave may be used as provided in the collective bargaining agreement. Additional time off, if any, will be without pay.

11. Breath Alcohol Testing

11.1. *General Provisions*

11.1.1. All breath specimens must be collected through the use of an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a Conforming Products List (CPL) for such devices.

11.1.2. If the result of the initial screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be conducted. The confirmation test will be conducted per SAMSHA guidelines.

11.1.3. If the results of the initial screening test and the confirmation test are different, the confirmation test result will be deemed to be the final result.

11.1.4. If an employee attempts and fails to provide an adequate amount of breath, the employee will be required to submit to a medical evaluation by a physician of the City's choice. If no valid medical reason is determined, then the employee's inability to provide an adequate amount of breath will be considered to be a refusal to submit to a test.

11.2. *Breath Alcohol Test Results*

11.2.1. If the results of the breath alcohol test are below 0.02, the employee may be returned to work immediately.

11.2.2. A confirmed alcohol concentration of 0.04 or greater will be considered a positive breath alcohol test result and a violation of this policy.

11.2.3. If an employee has an alcohol concentration level of 0.02 but less than 0.04, the employee will immediately be relieved from operating a commercial motor vehicle for 24 hours pursuant to 49 CFR Part 382.505. The covered employee must have a negative return to duty test before being allowed to return to work. The employee may be subject to discipline for violation of other City policies.

11.2.4. The employee may also be subject to discipline up to and including termination of employment as provided by the City's personnel policies and procedures, the last chance agreement, or the collective bargaining agreement, whichever is appropriate if there is an alcohol concentration rate of 0.02 but less than 0.04 two times or more within a two year period.

11.2.5. If the results of the breath alcohol test are 0.04 or greater, the employee will be immediately removed from their safety-sensitive position, advised of the resources available to evaluate and resolve problems associated with alcohol misuse, and be referred to an SAP. The covered employee will be placed on a paid leave of absence pending the results of the evaluation by the SAP. Such employee must comply with the SAP recommendations of rehabilitative treatment, outpatient counseling, and all contents of a signed Last Chance Agreement.

11.2.6. An employee with a breath alcohol concentration level of 0.02 or greater will be transported to their residence. If the covered employee insists on driving, law enforcement will be notified.

12. Refusal to Submit to a Test

12.1. With the exception of a pre-employment test, any employee who refuses to submit to a drug or alcohol test must be evaluated by an SAP. An employee who refuses will be placed on administrative leave pending the results of the evaluation by the SAP and may be subject to discipline, up to and including suspension or discharge. A refusal to submit to a test includes:

12.1.1. Refusal to take the test,

12.1.2. Failure to provide a sample,

12.1.3. Failure to provide a sufficient specimen with no medical information,

12.1.4. Failure to remain at the testing site until the test is complete,

12.1.5. Tampering with or attempting to adulterate the specimen or collection procedure,

12.1.6. Not reporting to the collection site in the time allotted,

- 12.1.7. Not cooperating with the collection process,
- 12.1.8. Leaving the scene of an accident without a valid reason before the tests have been conducted,
- 12.1.9. Failure to undergo a medical evaluation as required by an MRO or Designated Employer Representative (DER) for drug & alcohol testing.

12.2. If the employee does not comply with this policy, the employee may be subject to discipline up to and including termination. A refusal to take the test will bring the same consequences as a positive result; and the employee will immediately be removed from any safety-sensitive duties.

13. SAP, Evaluation & Treatment

- 13.1. In the event that the employee is referred for evaluation by an SAP, the SAP will determine what assistance, if any, the employee needs in resolving problems associated with alcohol and/or controlled substances misuse.
- 13.2. The employee may be required to satisfactorily complete an approved drug or alcohol treatment program and aftercare as a condition of continuing employment as determined by the SAP.
- 13.3. Absences for treatment may qualify for use of leave benefits provided the employee is following the prescribed treatment program. This requirement shall not be interpreted to require the City to provide or pay for any rehabilitation costs above what is available through the employee's medical insurance coverage. Employees who seek recommended treatment and counseling shall be responsible for the costs incurred.
- 13.4. Employees working under a last chance agreement will be required to submit to random follow-up drug and/or alcohol testing to verify continued abstinence from drugs and/or alcohol for at least 12 but not more than 60 months. The frequency and duration of the follow-up testing will be recommended by the SAP, with a minimum of six (6) tests during the first 12 months after the covered employee has returned to duty.
- 13.5. Copies of the SAP's evaluation and the intervention recommendation(s) will be forwarded to the Human Resources Department.
- 13.6. Prior to returning to work, Human Resources must receive a letter from the SAP documenting the employee's satisfactory participation in the prescribed intervention and releasing the employee to return to work. The employee also must pass the return to duty testing for alcohol and/or controlled substances misuse before returning to work.

14. Working conditions

- 14.1. The presence or treatment of a substance abuse problem does not excuse the employee from meeting performance, safety, or attendance standards or following other City instructions. Requests for Americans with Disabilities Act (ADA) accommodation will be handled through that process.

15. Last Chance Agreement

- 15.1. An employee who tests positive on a drug and/or alcohol test or who is referred to drug and/or alcohol treatment that requires them to be away from work will be required to sign a last chance agreement prior to being permitted to return to their safety-sensitive position.
- 15.2. The agreement may include, but is not limited to the following requirements:
 - 15.2.1. A release to work statement from an approved treatment specialist.
 - 15.2.2. A negative test for drugs and/or alcohol.
 - 15.2.3. An agreement to follow-up testing.
 - 15.2.4. A statement of expected work-related behaviors.
 - 15.2.5. An agreement to follow specified aftercare requirements as determined by the SAP.
 - 15.2.6. An expressed understanding that violation of the last chance agreement may result in discipline, up to and including suspension or discharge.
 - 15.2.7. A positive test for a controlled substance and/or an alcohol concentration rate of 0.04 or greater within three years from the date of the negative return to duty test shall result in immediate termination.
 - 15.2.8. The employee must also follow all other City policies and procedures.
- 15.3. If an employee successfully completes a last chance agreement, neither the agreement nor the positive test which gave rise to it shall be considered for purposes of discipline or discharge.

16. Confidentiality

- 16.1. The City and contractors will maintain all records regarding the drug and/or alcohol testing of covered employees in a secure manner to prevent the disclosure of information to unauthorized persons. The City will only release information regarding the drug and/or alcohol testing of employees as necessary and/or required by law.

17. Voluntary Employee Assistance

- 17.1. The City encourages employees who feel they may be suffering from problems related to use of drugs or alcohol to seek treatment from the Employee Assistance Program or medical provider of their choice.

18. Recordkeeping and Record Reporting

- 18.1. The City and/or the contractor shall maintain records related to the drug and alcohol testing program and collection process per 49 CFR 382.401 including:
 - 18.1.1. An annual calendar year report summarizing results of the City's drug and alcohol misuse prevention program to meet applicable provisions of the Omnibus Transportation Employee Testing Act's (OTETA) Management Information System reporting requirements.
 - 18.1.2. Records related to education and training including supervisor reasonable suspicion testing.
 - 18.1.3. Materials on alcohol and/or controlled substances misuse including a copy of the City's policy and administrative procedures;
 - 18.1.4. Records of employee access authorization and queries to the FMCSA Drug & Alcohol Clearinghouse.

19. Program Coordination and Training. The Risk Manager is the City's drug abuse and alcohol misuse prevention coordinator for employees assigned to covered positions. The Risk Manager will coordinate the City's responsibilities and compliance efforts with the applicable provisions of the OTETA. The Risk Manager will:

- 19.1. Ensure that all covered employees receive and acknowledge receipt of written materials explaining the City's alcohol and controlled substances misuse prevention program requirements as provided in 49 CFR, Section 382.601 including:
 - 19.1.1. The City's administrative regulation;
 - 19.1.2. Contact information for a person knowledgeable about the materials, administrative regulations and the OTETA;
 - 19.1.3. Information on the City and employee obligations regarding the FMCSA Drug & Alcohol Clearinghouse;
 - 19.1.4. Categories of employees covered;

19.1.5. Information about the safety sensitive functions and what period of the work day the employee is required to be in compliance. Safety sensitive functions shall include such responsibilities as all time on duty waiting to be dispatched, driving time, assisting or supervising loading or unloading, repairing, obtaining assistance for or remaining in attendance upon a disabled vehicle. All time spent providing breath and urine samples, including time to and from the collection or testing site as needed to comply with random, reasonable suspicion, post-accident or follow-up testing will also be considered as safety sensitive functions;

19.1.6. Specific information concerning prohibited conduct;

19.1.7. Circumstances under which employees will be tested;

19.1.8. Procedures used in the testing process;

19.1.9. Explanation of what constitutes a refusal to submit to an alcohol and/or controlled substances test;

19.1.10. Consequences of violations (i.e., discipline up to and including dismissal, removal from safety sensitive functions as required by the OTETA, referral to a substance abuse professional (SAP) for evaluation, treatment and follow-up testing) as required;

19.1.11. Information on the effects of alcohol and/or controlled substances misuse on personal life, health and safety in the workplace.

19.2. Ensure that supervisors designated to determine reasonable suspicion receive at least 60 minutes of controlled substances misuse training and an additional 60 minutes of alcohol misuse training. Training will include the physical, behavioral, speech and performance indicators of probable alcohol and/or controlled substances misuse;

19.3. Ensure that the Development and Public Works Operations Manager is informed when an employee tests positive for alcohol and/or controlled substances misuse; alert them upon receipt of the SAP's evaluation and intervention recommendations; alert them upon receipt of a letter documenting the employee's satisfactory progress and/or completion of the recommended intervention when released to return to duty.

Definitions:

1. *"Accident"* is an occurrence involving a covered employee while operating a commercial motor vehicle on or off the job which results in:
 - A. A fatality;
 - B. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- C. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.
2. “*Alcohol Use*” is the consumption of any beverage, mixture or preparation, including medication, containing alcohol.
 3. “*Alcohol Possession*” is having custody or control of alcohol; except, excluding alcohol being transported as cargo.
 4. The “*Clearinghouse*” is a secure online database that gives employers, the Federal Motor Carrier Safety Administration (FMCSA), State Driver Licensing Agencies (SDLAs) and State law enforcement personnel real-time information about commercial driver’s license (CDL) and commercial learner’s permit (CLP) holders’ drug and alcohol program violations. The Clearinghouse contains records of violations of drug and alcohol prohibitions in 49 CFR Part 382, Subpart B, including positive drug or alcohol test results and test refusals. When a driver completes the return-to-duty (RTD) process and follow-up testing plan, this information is also recorded in the Clearinghouse.
 5. “*Commercial Driver’s License (CDL)*” is required for employees who operate vehicles designed for carrying sixteen or more people, including the driver; a motor vehicle whose gross vehicle weight rating (GVWR) is more than 26,000 pounds; a vehicle with GVWR greater than 26,000 pounds inclusive of a towed unit with a GVWR greater than 10,000 pounds; or a vehicle hauling hazardous materials which require placards.
 6. “*Controlled Substances*” as used in this procedure, refers to all controlled substances covered by the OTETA; including but not limited to marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). The term also includes, for purposes of this operating procedure, any and all prescription medication.
 7. “*Designated Employer Representative (DER)*” Is a person authorized by the employer to communicate with the MRO regarding drug and alcohol. The intent is to limit access to or protect sensitive medical information.
 8. “*Federal Motor Carrier Safety Administration (FMCSA)*”
 9. “*Medical Review Officer (MRO)*” is a licensed medical doctor or osteopathic physician selected by the City to monitor, interpret, verify and report drug testing results.
 10. “*Random Testing*” is testing conducted on a random, unannounced basis just before, during, or immediately after performance as covered employees.
 11. “*Safety Sensitive Function*” The Department of Transportation (DOT) defines a safety-sensitive worker as someone who holds a job that can impact both their own safety and the safety of the public. Some of these safety sensitive duties include operating commercial

motor vehicles, vehicles that carry 16 passengers or more, waiting to be dispatched for work, and maintaining or repairing commercial vehicles.

12. “*Substance Abuse Professional (SAP)*” as referred to in this procedure, means:
- A. A licensed physician with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders;
 - B. A licensed or certified psychologist, social worker or employee assistance professional with like knowledge; or
 - C. An alcohol and controlled substance abuse counselor certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC).

Resources:

- FMCSA Clearinghouse: www.clearinghouse.fmcsa.dot.gov
- Federal Department of Transportation (DOT): www.dot.gov

CREATION (Original):

This administrative regulation is in effect as of the date of my signature. I authorize the Human Resource Director to modify the history and resources sections and header, footer, and numbering without my reauthorization. The administrative regulation remains in effect should these revisions occur.

Approved By:	Nancy Newton, City Manager	Dates:	June 11, 2021
Author:	Tom Mugleston, Risk Manager		
Responsible Party:	Risk Management		
Replaces:	N/A		

PERIODIC REVIEW:

Reviewer:		Date:	
Reviewer:		Date:	
Reviewer:		Date:	
Reviewer:		Date:	
Reviewer:		Date:	

REVISIONS:

Version #2:	Responsible Party:			
	Revised By:			
	Approved By:		Date:	
	Reason/Summary of Changes:			